IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10290 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHD.SARIF @ KALU @ GARDEN MOHD.ISHAK PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10290 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 14/12/2004

ORAL JUDGEMENT

#. Heard Mr.M.R.Prajapati, learned counsel appearing for

the petitioner and Ms.H.B.Punani, learned AGP for the other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 9.6.2004 passed by the Commissioner of Police, Ahmedabad City under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is detained on the ground that he is Bootlegger within the meaning of Section 2(b) of the Act, as he was found to have involved in four offences mentioned in the grounds for detention conveyed to the present petitioner when the order of detention was executed. The details of all four offences have been shown in tabular form in the grounds for detention and it emerges from the record that registration of all these offences have been considered for recording subjective satisfaction to the effect that the bootlegging activities of the petitioner has potentiality of disturbing maintenance of public health and public order. On all four occasions, the petitioner was found to have been involved for the offence punishable under the Bombay Prohibition Act and in dealing with country liquor. No formal statements have been recorded by the sponsoring authority. The first offence referred to by the authority is of 2nd April, 2004 and the last offence is of 3rd June, 2004.

#. The order is assailed on various grounds mentioned in the memo of petition. However, Mr.Prajapati has focused his arguments on two main points. The first point pressed into service is that the order under challenge is passed mechanically and without application of mind and the fourth offence allegedly committed on 3rd June, 2004, and the petitioner was arrested on 8th June, 2004. But he shown to be arrested on 8th June, 2004 for both offence from the document at Annexure-B at page.13. It is argued that the order under challenge is of 9th June, 2004. The question posed before this Court by the Counsel that nothing is placed on record when the sponsoring authority prepared the proposal, it was submitted and the order of detention was passed. It appears that the order of preventive detention has been passed under hot haste and such order cannot be said to be an order passed with proper application of mind. In support of this submission, Mr.Prajapati has placed reliance on the decision of this Court in case of

RANUBHAI BHARAVAD V. STATE OF GUJARAT, 2000 (3) GLR 2696 where this Court has held that passing of the order on the next date of verification of the statements by the detaining authority can be said to be an order passed mechanically and without application of mind. In the present case also, the order is passed on the next date of arrest of the accused, so papers must not have been placed prior to 8th June, 2004 before the authority. The Court shall have to accept this point as valid point in view of the settled legal position.

#. The second point which is more important according to Mr.Prajapati that no preventive order was required to be passed as the petitioner was in judicial custody. After arrest the petitioner was produced before the Magistrate and he was sent to judicial custody. While recording subjective satisfaction, the detaining authority has drawn unreasonable inference that the petitioner would pray for bail and competent court shall also grant bail and thereafter the petitioner shall continue his bootlegging activities and that activity shall affect adversely to public harmony or health. In absence of cogent and convincing material, this type of inference can be said to have been drawn on conjecture and surmises and such order cannot be sustained. It is rightly argued by the learned counsel Mr.Prajapati that ratio in the decision of AMRITLAL AND OTHERS V. UNION GOVERNMENT, AIR 2000 SC 3675 would help the petitioner.

#. For short, on both these grounds, the Court finds that the order under challenge is not sustainable and therefore the petition shall have to be allowed.

#. The petition succeeds and the same is allowed. The order of detention dated 9.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu - MOHD.SARIF @ KALU @ GARDEN MOHD.ISHAK PATHAN who has been detained at Surat Jail be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :14/12/2004 [C.K.Buch, J.]

#kailash#